

## CHAPTER 24:05:19

### ALLOCATION AND USE OF FUNDS

#### Section

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**24:05:19:01. Local education agency entitlements.** From the total amount of funds received by the state education agency under the Individuals with Disabilities Education Act, Part B, ~~local education agencies are entitled to 75 percent of this amount contingent upon the submission of policies and procedures that meet the requirements of this article. The amount of funds a local education agency receives is based on the total number of certified children with disabilities aged 3 to 21, inclusive, receiving special education and related services regulated by the division. For any fiscal year in which~~

~~federal funds for IDEA Part B exceed \$4.9 billion dollars, the state education agency shall distribute to local education agencies funds according to the following criteria~~

for any fiscal year, the department shall distribute any funds not reserved under §§ 24:05:19:09, 24:05:19:10, and 24:05:19:11 to local education agencies that have established their eligibility under this article for use in accordance with Part B of the IDEA. The department shall distribute these federal funds to local education agencies according to the following criteria:

(1) Local education agencies shall receive 75 percent of the amount they would have received ~~in the fiscal year preceding the first fiscal year in which this section applies~~ under section 611 of IDEA for fiscal year 1999, as that section was then in effect;

(2) Eighty-five percent of remaining funds shall be allocated to local education agencies based on the relative numbers of children enrolled in public and private elementary and secondary schools within each local education agency's jurisdiction; and

(3) Fifteen percent of remaining funds shall be allocated to local education agencies based on their relative numbers of children living in poverty, as determined by the state education agency.

~~The state education agency shall apply on a uniform basis across all local education agencies the best data that is available to it on numbers of children enrolled in public and private elementary schools and the numbers of children living in poverty.~~

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:01.01. Base payment adjustments.** For any fiscal year after 1999, the base payment described in subdivision 24:05:19:01(1) shall be adjusted under the following circumstances:

(1) If a new local education agency is created, the department shall divide the base allocation determined under this section for the local education agencies that would have been responsible for serving children with disabilities now being served by the new local education agency, among the new local education agency and affected local education agencies based on the relative numbers of children with disabilities ages 3 through 21;

(2) If one or more local education agencies are combined into a single new local education agency, the department shall combine the base allocations of the merged local education agencies; and

(3) If, for two or more local education agencies, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected local education agencies shall be

redistributed among affected local education agencies based on the relative numbers of children with disabilities ages 3 through 21.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:02. Reallocation of local education agency funds.** If the ~~division~~ department determines that a local education agency is adequately providing a free appropriate public education to all certified children with disabilities residing within the legal boundaries of the district with state and local funds, the ~~division~~ department may reallocate a portion or all of a district's Individuals with Disabilities Education Act, Part B funds that are not needed by that district to provide FAPE to other districts in the state which are not adequately providing special education and related services to all its resident certified children with disabilities.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:04. Nonsupplanting.** Each local education agency must use Individuals with Disabilities Education Act, Part B funds to supplement other federal, ~~and, to the extent practicable, increase the level of state, and local funds~~ expended for the education of certified children with disabilities. Federal IDEA Part B funds may not be used to supplant state, other federal, and local funds.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05. Proscribed use of funds.** Except as provided in §§ 24:05:19:05.01 and ~~24:05:19:05.02~~ 24:05:19:05.05, Individuals with Disabilities Education Act, Part B funds may not be used to reduce the level of expenditures made by a local education agency from local funds below the level of expenditures for the fiscal year immediately preceding the fiscal year for which the local education agency is applying for funds for the education of children with disabilities.

A school district complies with this section for purposes of establishing the school district's eligibility for an award for a fiscal year if the district budgets ~~expends~~, for the education of students with disabilities, at least the same total or per capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available: :

- (1) Local funds only; or

- (2) The combination of state and local funds.

A district that relies on subdivision (1) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of students with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available, ~~if that year is on or after July 1, 1997. If later, a district must use the most recent fiscal year for which information is available,~~ and must ensure that the standard in subdivision (1) of this section was used to establish compliance.

The ~~division~~ department may not consider any expenditures made from funds provided by the federal government for which the ~~division~~ department is required to account to the federal government or for which the district is required to account to the federal government directly or through the ~~division~~ department in determining a district's compliance with the requirements of this section.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.01 Exception to maintenance of effort.** A Notwithstanding the restrictions in § 24:05:19:05, a school district may reduce the level of expenditures by the district under Part B of the Individuals with Disabilities Education Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

- (1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, ~~who are replaced by qualified, lower-salaried staff;~~

- (2) A decrease in the enrollment of students with disabilities;

- (3) The termination of the obligation of the district, consistent with this chapter, to provide a program of special education to a particular student with a disability that is an exceptionally costly program as determined by the state, because the student:

- (a) Has left the jurisdiction of the district;
  - (b) Has reached the age at which the obligation of the district to provide a free appropriate public education to the student has terminated; or
  - (c) No longer needs the program of special education; ~~or~~

- (4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities; or

- (5) The assumption of cost by the extraordinary costs fund operated by the department under chapter 24:05:33.01.

~~In order for a school district to invoke the exception in subdivision (1) of this section, the district must ensure that those voluntary retirements or resignations and replacements are in full conformity with existing school board policies in the district, the applicable collective bargaining agreement in effect at that time, and applicable state statutes.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.02. Use of federal funds in certain fiscal years.** ~~For any fiscal year in which federal funds for Part B of IDEA exceeds \$4.1 billion dollars, a school district may treat as local funds up to 20 percent of the amount of funds it receives under Part B of the IDEA that exceeds the amount it received under Part B of the IDEA for the previous fiscal year. The requirements regarding supplanting and maintenance of effort do not apply with respect to the amount that may be treated as local funds under this section.~~

~~If the department determines that a school district is not meeting the requirements of this article, the department may prohibit the district from treating funds received under Part B of IDEA as local funds under this section for any fiscal year, but only if it is authorized to do so by the state constitution or a state statute Repealed.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.03. Permissive use of funds.** Notwithstanding federal requirements governing excess cost, use of Part B funds to supplement state, local and other federal funds and not supplant those funds, maintenance of effort, and commingling requirements, IDEA Part B funds provided to a school district may be used for the following activities:

(1) For the costs of special education and related services and supplementary aids and services provided in a regular class or other education related setting to a student with a disability in accordance with the individual education program of the student, even if one or more nondisabled students benefit from these services; ~~Such funds may also be used to develop and implement a fully integrated and coordinated services system in accordance with § 24:05:19:05.05.~~

(2) To develop and implement coordinated, early intervening educational services in accordance with this chapter; and

(3) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

A school district may use funds received under Part B of the IDEA to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.04. Coordinated services system.** ~~A school district may not use more than five percent of the amount the district receives under Part B of the IDEA for any fiscal year, in combination with other amounts (which must include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for students and families, including students with disabilities and their families. In implementing a coordinated services system under this section, a school district may carry out activities that include:~~

~~(1) Improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;~~

~~(2) Service coordination and case management that facilitate the linkage of individualized education programs under Part B of IDEA and individualized family services plans under Part C of IDEA with individualized service plans under multiple federal and state programs;~~

~~(3) Developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under IDEA; and~~

~~(4) Interagency personnel development for individuals working on coordinated services.~~

~~If a school district is carrying out a coordinated services project under Title XI of the Elementary and Secondary Education Act of 1965 as amended to November 1, 1999, and a coordinated project under Part B of IDEA in the same schools, the district or agency shall use the amounts under this section in accordance with the requirements of that title Repealed.~~

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.05. Adjustment to local fiscal efforts in certain fiscal years.** Notwithstanding the excess cost and maintenance of effort requirements, and the exception regarding early intervening services in this chapter, for any fiscal year for which the allocation received by a district exceeds the amount the district received for the previous fiscal year, the district may reduce the level of expenditures, otherwise required, by not more than 50 percent of the amount of that excess.

If a school district exercises the authority under this section, the district must use an amount of local funds equal to the reduction in expenditures under this section to carry out activities that could be supported with funds under the ESEA regardless of whether the district is using funds under the ESEA for those activities.

Notwithstanding the requirements of this section, if the department determines that a district is unable to establish and maintain programs of FAPE that meet the requirements of this article or the department has taken action against the district under chapter 24:05:20, the department must prohibit the district from reducing the level of expenditures under this section for that fiscal year.

The amount of funds expended by a district for early intervening services under this chapter shall count toward the maximum amount of expenditures that the district may reduce under this section.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.06. Early intervening services - - General.** A district may not use more than 15 percent of the amount the district receives under Part B of the IDEA for any fiscal year, less any amount reduced by the district pursuant to § 24:05:19:05.05, if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

Nothing in this section either limits or creates a right to FAPE under Part B of the IDEA or delays appropriate evaluation of a child suspected of having a disability.

Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.07. Early intervening services - - Activities.** In implementing coordinated, early intervening services, a school district may carry out activities that include:

(1) Professional development, which may be provided by entities other than school districts, for teachers and other school staff to enable such personnel to deliver scientifically-based academic and behavioral interventions, including scientifically-based literacy instruction, and, if appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.08. Early intervening services - - Reporting.** Each school district that develops and maintains coordinated, early intervening services must annually report to the department on:

(1) The number of children served who received early intervening services; and

(2) The number of children served who received early intervening services and subsequently receive special education and related services under Part B of the IDEA during the preceding two year period.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.09. Schoolwide programs under title 1 of ESEA - - General.** Notwithstanding the provisions of excess cost and maintenance of effort, or any other provision of Part B of the IDEA, a school district may use funds received under Part B of the IDEA for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed the amount received by the district under Part B of the IDEA for that fiscal year divided by the number of children with disabilities in the jurisdiction of the district and multiplied by the number of children with disabilities participating in the schoolwide program.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.



**24:05:19:05.10. Schoolwide programs under title 1 of ESEA - - Funding.**  
The funds described in § 24:05:19:05.09 are subject to the following conditions:

- (1) The funds must be considered as federal Part B IDEA funds for purposes of the calculations required under excess cost, supplementing, and supplanting; and
- (2) The funds may be used without regard to the other requirements of this chapter.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:05.11. Schoolwide programs under title 1 of ESEA - - Meeting other Part B requirments.** Except as provided in § 24:05:19:05.10, all other requirements of Part B of the IDEA must be met by a school district using Part B funds in accordance with § 24:05:19:05.09, including ensuring that children with disabilities in schoolwide program schools:

- (1) Receive services in accordance with a properly developed IEP; and
- (2) Are afforded all of the rights and services guaranteed to children with disabilities under the IDEA.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:08. Valid obligations enforceable.** Nothing in this article relieves an insurer or a similar third party from an otherwise valid obligation to provide or pay for services provided to a child with disabilities.

Consistent with the IEP requirements in this article regarding the provision of services in a timely manner, the ~~division~~ department shall ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

If placement in an approved public or private residential program is necessary to provide special education and related services to a child with disabilities, the program, including nonmedical care and room and board, must be provided at no cost to the parent of the child.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:08.03. Maintenance of state financial support.** ~~On either a total or per capita basis, the~~ The state may not reduce the amount of state financial support for special education and related services for students with disabilities, or financial support otherwise made available because of the excess costs of educating those students, below the amount of that support for the preceding fiscal year.

In complying with state requirements for commingling, nonsupplanting and maintenance of effort, the state may not use funds paid to it under Part B of IDEA to satisfy state-law mandated funding obligations to school districts, including funding based on student attendance, enrollment, or inflation.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:09. Funds for state administration.** ~~The state may use five percent of the total state allotment in any fiscal year under Part B of the Individuals with Disabilities Education Act, as in effect on June 4, 1997, or \$500,000, whichever is greater, for administrative costs related to carrying out the Act. This includes administrative costs for Section 619, Part B of IDEA, Preschool Grants, and Part C of IDEA, Infants and Toddlers with Disabilities. In addition, these funds may be used for the coordination of services with other programs that serve children with disabilities, including the provision of technical assistance. However, this amount may not be greater than 25 percent of the state's total allotment for the fiscal year under Part B of the Act.~~

The state for each fiscal year may set aside an amount equal to or less than \$850,000 adjusted cumulatively for inflation for state administration under Part B of the IDEA.

Before the expenditure of funds under this section, the state must certify to the U.S. Secretary of Education that the arrangements to establish responsibility for services pursuant to chapter 24:05:14 are current.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:10. Allowable costs.** The ~~division~~ department may use funds under § 24:05:19:09 for the following costs:

~~(1) Administration of state activities and planning at the state level, including planning or assisting in the planning of programs or projects for the education of children with disabilities;~~

~~(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities;~~

~~(3) Technical assistance to local educational agencies to meet the requirements of this article;~~

~~(4) Leadership services for the program supervision and management of special education activities for children with disabilities; and~~

~~(5) Other state leadership activities and consultative services.~~

(1) Administering the Part B, Part C, and preschool section 619 programs under the IDEA; and

(2) Coordinating activities under Part B of the IDEA with, and providing technical assistance to, other programs that provide services to children with disabilities.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:11. Use of state agency allocations - - Other state-level activities.** The state may use an amount equal to nine and one-half percent, adjusted cumulatively for inflation each fiscal year, the portion of its allocation that it does not use for administration under §§ 24:05:19:09 and 24:05:19:10 for other state-level activities. Some portion of these funds shall be used to carry out monitoring, enforcement, complaint investigation, and direct and support services and for the administrative costs of the state's monitoring and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985. Additional uses of these funds include:

~~(1) The the establishment and implementation of the mediation process required by this article, including providing for the costs of mediators and support personnel; .~~

~~(2) Activities at the state and local levels to meet the performance goals established by the state and to support the development and implementation of the state improvement plan under subpart 1 of Part D of the IDEA, state program improvement grants for children with disabilities, if the state receives funds under that subpart;~~

~~(3) To supplement other amounts used to develop and implement a statewide coordinated services system designed to improve results for students and families, including students with disabilities and their families, but not to exceed one percent of the~~

~~amount received by the state under Section 611 of the IDEA, authorization, allotment, use of funds, and authorization of appropriations. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the state under Part C of the IDEA, infants and toddlers with disabilities; and~~

~~(4) For subgrants to school districts for capacity building and improvement.~~

~~Direct services are services provided to a child with disabilities by the state directly, by contract, or through other arrangements.~~

~~Support services include implementing the comprehensive system of personnel development, recruitment, and training of mediators, hearing officers, and surrogate parents. It also includes public information and parent training activities related to a free appropriate public education for children with disabilities.~~

~~Of the funds the division retains under this section, the division may use the funds directly or distribute them to districts on a competitive, targeted, or formula basis.~~

Funds reserved under this section also may be used to carry out the following activities:

(1) For support and direct services, including technical assistance, personnel preparation, and professional development and training;

(2) To support paperwork reduction activities, including expanding the use of technology in the IEP process;

(3) To assist school districts in providing positive behavioral interventions and supports and mental health services for children with disabilities;

(4) To improve the use of technology in the classroom by children with disabilities to enhance learning;

(5) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities;

(6) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities;

(7) To assist districts in meeting personnel shortages;

(8) To support capacity building activities and improve the delivery of services by school districts to improve results for children with disabilities;

(9) To provide alternative programming for students with disabilities who have been expelled from school, and services for students with disabilities in correctional facilities or students enrolled in state-operated or state-supported schools;

(10) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with the ESEA; and

(11) To provide technical assistance to schools and school districts and direct services, including supplemental educational services as defined in the ESEA to children with disabilities, in schools or school districts identified for improvement under the ESEA on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the state under the ESEA.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:12. Subgrants for capacity-building and improvement.** ~~Based upon the availability of federal funds under Part B of IDEA for any given fiscal year, the division shall award subgrants to school districts for capacity building and program improvement. School districts may use these federal funds to assist them in providing direct services and in making systemic change to improve results for students with disabilities through one or more of the following:~~

~~(1) Direct services, including alternative programming for students who have been expelled from school, and services for students in correctional facilities, and students enrolled in state-operated or state-supported schools;~~

~~(2) Addressing needs or carrying out improvement strategies identified in the state's improvement plan under subpart 1 of Part D of the IDEA, state program improvement grants for children with disabilities;~~

~~(3) Adopting promising practices, materials, and technology, based on knowledge derived from educational research and other sources;~~

~~(4) Establishing, expanding, or implementing interagency agreements and arrangements between school districts and other agencies or organizations concerning the provision of services to students with disabilities and their families; and~~

~~(5) Increasing cooperative problem solving between parents and school personnel and promoting the use of alternative dispute resolution~~ Repealed.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:19:13. Division discretion in awarding subgrants.** ~~The division may establish priorities in awarding subgrants under § 24:05:19:11.01 to school districts competitively, or on a targeted basis~~ Repealed.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** ~~SDCL 13-37-1.1.~~

**Law Implemented:** ~~SDCL 13-37-1.1.~~